

MOTION FILED

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No. 97-873

In The
Supreme Court of the United States

October Term, 1997

UNITED STATES,

Petitioner,

-vs-

ALOYZAS BALSYS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

**MOTION OF WORLD JEWISH CONGRESS
AND HOLOCAUST SURVIVORS AND FRIENDS
IN PURSUIT OF JUSTICE, INC.
AS AMICI CURIAE
TO FILE THEIR BRIEF OUT OF TIME**

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APP

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Amici World Jewish Congress and Holocaust Survivors and Friends in Pursuit of Justice, Inc. move this Court for an order allowing them to file their brief *amici curiae* out of time:

1. The issue in this case is whether Aloyzas Balsys, an alleged Nazi war criminal, may invoke the Fifth Amendment right against self-incrimination based on his fear of a foreign prosecution. Balsys has refused to testify at a deposition convened pursuant to an administrative subpoena, at which the Government intended to question him regarding his activities during World War II. The purpose of such questioning would be to ascertain whether Balsys had obtained his permanent resident status in this country fraudulently. Balsys purportedly fears that his answers at such a deposition could be used

against him in a criminal prosecution in Lithuania, where he allegedly served as a member of the Nazi-controlled Lithuanian Security Police, Israel or Germany.

2. *Amici* are Jewish organizations whose purpose includes combating anti-Semitism. They have a legitimate interest in ensuring that the Fifth Amendment is not improperly utilized to allow Nazi war criminals to remain in this country in violation of the immigration law.

3. *Amici* sought and received permission from both the Solicitor General's Office and from respondent's counsel to file a brief *amici curiae* in support of the Government. Pursuant to such permission, *amici* served and filed their brief in accordance with Rule 29.2 and 29.3 of the Supreme Court Rules, by mailing 3 copies to each party and 40 copies (with proof of service) to the Court on February 27, 1998, the date on which the Government's brief in this case was due. Prior to filing the brief by this method, Sanford Hausler, one of *amici*'s counsel, telephoned the Supreme Court Clerk's Office to ascertain if mailing the briefs to the Court on the date that they were due constituted timely filing. The Court employee who took his call assured him that filing in that manner was proper.¹

4. *Amici*'s counsel received a telephone from Cathy Tycz of the Supreme Court Clerk's Office on March 3, 1998. She informed counsel that in its order granting certiorari, the Court had provided that Rule 29.2 was not applicable in this case. As the briefs were not received in the Clerk's Office by 3:00 p.m. on February 27, 1998, they were technically untimely.

5. *Amici* and their counsel were unaware of that provision of the order. Although their counsel conferred with the Solicitor General's Office, no one from that office informed

¹ Hausler's conversation with the clerk was general in nature and did not relate specifically to the *Balsys* case.

them of the special requirements relating to filing contained in the order granting certiorari. The notation that certiorari was granted, found in United States Law Week at 66 U.S.L.W. 3467, does not say anything about the inapplicability of Rule 29.2.

6. As *amici* served respondent by mail on February 27, 1998, and as respondent would, in the normal course, receive the three copies of the brief on the next business day, there is little chance that respondent would, in any way, be prejudiced were this Court to accept *amici*'s brief for filing out of time.

7. *Amici*'s brief contains analysis that they believe will assist the Court in its resolution of this case. The arguments contained therein are not made in the Government's brief.

WHEREFORE, *amici* respectfully request that this Court allow their brief to be filed out of time.

Dated: March 5, 1998

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